REMARKS

The Non-Final Office Action mailed January 14, 2008 considered claims 2-5, 7-13, 15, 48-53 and 55. Claims 2-5, 7-13, 15, and 48 were rejected because the claimed invention was directed to non-statutory subject matter. Claims 2-5, 7-13, 15, 48-53 and 55 were rejected under 35 U.S.C. 103(a) as being unpatentable over Avvari (US 7,114,159) hereinafter *Avvari* in view of Silva (US 6,163,805) hereinafter *Silva* and further in view of Duggan (US 6,002,871) hereinafter *Duggan*.[1]

As a preliminary matter, Applicants would like to thank the Examiner for the courtesies extended during the telephonic interview held April 3, 2008. Details of that interview are included herein below.

By this paper, claims 3-5, 7, 12, 13, 15, and 48-50 have been cancelled, claims 2, 8, 9, 10, and 51 have been amended[2], such that claims 2, 8-11, 51-53 and 55 remain pending in the application, of which only claims 51 is an independent claim.

Rejections Under 35 USC 101

Claims 2-5, 7-13, 14 and 48 were rejected under 35 USC 101 as being directed to non-statutory subject matter. Although applicant does not acquiesce to these assertions, these claims have either been cancelled or amended in a fashion such that the rejection is obviated.

Rejections Under 35 USC 103

Each of the claims was rejected as being unpatentable over *Avvari*, in view of *Silva*, in further view of *Duggan*. While not necessary to overcome the present rejection, the claims have been amended to more clearly illustrate some of the distinctions between these references and what is recited by the claims of the present application.

In particular, the claims of the present application are directed to testing software. Claim 1 is directed to a method which receives information for a test packet, where the information includes test conditions and group information defining a selected platform and language. The

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[1] Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

[2] Support for the amendments can be found throughout the specification, but with particularity at pages 22-25 (see in particular page 24 at lines 3-10) and Figure 8 of the present application (see in particular acts 804, 816 and 818). Note also that the acts of 804, 816 and 816 shown in Figure 8 and with respect to building test packages from tasks defined in a test packet are performed with respect to either a test packet that can be assigned without reimaging (act 802) or a test packet that can be assigned with reimaging (act 806). This illustrates the functionality of building and assigning a different test package to the available test client with tasks from the test packet.

method then searches for an available client to perform a test job including tasks for a particular group. The method then includes selecting the test packet from the database. Selecting the test packet from the database includes determinations based on reimaging and building and assigning a test package with tasks selected from the test packet. Selecting the test packet from the database also include: "calculating an execution time for the test package and if the calculated execution time exceeds a predetermined allowable execution time, automatically building and assigning a different test package to the available test client with tasks from the test packet." At least this final element is not taught or suggested by the art of record.

In particular, the Office Action at page 6 states that "neither *Avvari* nor *Silva* explicitly disclosed calculate an execution time for the test job and if the calculated execution time exceeds a predetermined allowable execution time prevent the test job from being executed and automatically assign a different test job to the available test client." To show this element, the Office Action cites to *Duggan*. However, *Duggan* fails to teach or suggest "calculating an execution time for the test package and if the calculated execution time exceeds a predetermined allowable execution time, automatically building and assigning a different test package to the available test client with tasks from the test packet" as is now recited by the claims of the present application.

The cited portions of *Duggan* illustrate that a new session cannot be initiated if "a new session will exceed the duration of the test run (when specified as a total number of completed sessions)," col. 24, lines 12-14, or based on a period timer, col. 24, line 14-16. Other cited portions of *Duggan* are directed to time out interrupts and period timer interrupts col. 25, lines 20-35, and col. 26, lines 65- col. 7, line 5, and to determining if a test run is done based on completed sessions or specified stop time, col. 26, lines 59-65. However, *Duggan* does not *calculate* an execution time as is recited by the claims of the present application, but rather relies on interrupts of an actual expired time, an actual number of completed sessions, or based on an allowed rate at which new sessions may be initiated. The Examiner's attention is directed to col. 6, lines 11-17 for a discussion of completed sessions. In particular, this portion of *Duggan* teaches that a test run can be expressed as a number of completed sessions. Thus the discussion above related to duration of the test run is not even a time based determination, such as is recited by the claims of the present application, but rather is a number of sessions based determination that itself is independent of time based factors. The only time based factors discussed by

Duggan are actual time-outs, or rate controls. *Duggan* is silent with respect to the *calculation* of an execution *time* for a test package..
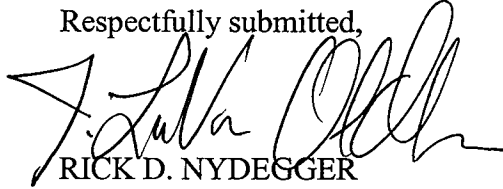
Assuming arguendo that *Duggan* could be reasonably construed to teach calculating an execution time, which it cannot, *Duggan* is nonetheless silent with respect to building and assigning a different test package to the available test client with tasks from the test packet as is recited by the claims of the present application. The Examiner's attention is directed to Figure 8 of the present application, which illustrates a loop including acts 804, 816, and 818. This loop allows an appropriate test package to be constructed for an available client for a selected test packet. This can be done by selecting appropriate tasks from the test package that can performed so long as they do not exceed a maximum execution time. *Duggan* does not illustrate this functionality. Instead *Duggan* teaches that if a period time is not running, that a new session can be initiated and initialized. See col. 27, lines 2-5. However, this differs from what is recited in the present application in a number of significant ways. Namely, it is not based on the calculation of an execution time of a different test package, but rather on the non-running of some timer. Further, there is no indication that the new session is a test packet constructed from tasks form the test packet as is recited by the claims of the present application. Thus Duggan completely fails to teach what is recited by the claims of the present application.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 3rd day of April, 2008.

Respectfully submitted,

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